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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,398	04/01/2004	Mikhail Korolik	LAM2P467	2902
25920 7590 01/29/2008 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			EXAMINER HECKERT, JASON MARK	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 01/29/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/817,398	Applicant(s) KOROLIK ET AL.	
	Examiner Jason Heckert	Art Unit 1792	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 17 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_



**MICHAEL BARR**  
**SUPERVISORY PATENT EXAMINER**

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments are not commensurate with the scope of the claim language. While what the applicant asserts *may* be true of the applicant's disclosure, examiner still believes that Bok reads on the limitations as claimed, as the limitations are very broad. First, applicant claims a proximity head defined to generate a fluid meniscus. Bok shows a head (84, 85, 86) generating a meniscus. Each head has a head surface with plurality of discrete conduits for delivering and removing fluid. One conduit, in the form of chamber 10, supplies a fluid. A second conduit, in the form of chamber 20, collects and removes fluid. Thus, Bok discloses a plurality of discrete conduits. The applicant also positively recites a chamber. Considering that the chamber only needs to "house the proximity head", a "clean room" read on reads on a chamber. Finally, conduit 3 emits a vapor, readable on environmental control gas. Such gas is emitted into the "clean room" in the vicinity of the substrate. Finally, applicant asserts that the meniscus is contained. In figure 2 of Bok, the meniscus is clearly shown as occurring between the head and the substrate. Whether fluid is left behind is irrelevant, as there is no limitation drawn to remaining fluid, the size of the meniscus, or where the meniscus occurs beyond "between the head surface and substrate surface". Applicant appears to be relying on the intended use of the apparatus to warrant patentability. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988);

*In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). Examiner asserts that he is not interpreting Bok broadly, rather the limitations are broad enough that Bok's teachings constitute as prior art.

Claim 20 suffers from many of the same issues as claim 13. Additionally, movement of the substrate is not positively recited in the claim language, so it is not clear which edge of the head is the leading or trailing edge. Until proper orientation is claimed, examiner finds that any edge reads on trailing edge.

In regards to claim 33 and 35, Bok discloses multiple heads treating different sides of a substrate in figure 8. Bok also discloses that various process control elements are known to those skilled in the art. Fluid sensors and the like are considered to be included in such process control elements. In regards to claim 34, the device of Bok is entirely capable of treating a bottom surface with one head, and then a top surface with another head. Examiner agrees that Bok does not disclose treating the top surface and bottom surface of a substrate *simultaneously* with two proximity heads; however this language is not included in the claims.

Thus, examiner maintains the rejections of 13, 20, 33, and 35 in view of Bok. Examiner discussed the above arguments and appropriate amendments in a telephonic interview with Albert Penilla on 1/25/07.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Heckert whose telephone number is (571) 272-2702. The examiner can normally be reached on Mon. to Friday, 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JMH